"Subject to the following provisions of this Part, the present laws of the Borneo States and of Singapore shall, on and after Malaysia Day, be treated as federal laws in so far as they are laws which could not be passed after Malaysia Day by the State Legislature, and otherwise as State laws."

The Prevention of Corruption Ordinance, 1960, could not be passed after Malaysia Day by the Singapore Legislature because it comes under the subject of criminal law, which is in the Federal List in the Ninth Schedule to the Constitution of Malaysia, and the Ordinance must therefore be treated as a federal law. This is a further reason for adapting the Ordinance to bring it into conformity with the constitutional changes referred to above by construing the word "Government" in section 2 to mean not only the Government of the State of Singapore but also the Government of the Federation of Malaysia. For the above reasons I hold that the Prevention of Corruption Ordinance, 1960, applies to the first appellant.

I find no substance in the other submissions made by counsel for the first appellant. I accordingly dismiss the appeal of the first appellant and affirm the conviction and sentence.

I now turn to the appeal of the second appellant. In considering the case against the second appellant, the district judge said that the only question for him to decide was which side he was to believe, that he preferred to believe the prosecution, and that he acordingly found the second appellant guilty. In my opinion, the district judge erred in not considering the further question whether, even if the district judge did not believe the second appellant, his evidence raised a reasonable doubt as to his guilt. I therefore allow the appeal of the second appellant and set aside the conviction and sentence and acquit him.

Appeal of first appellant dismissed.
Appeal of second appellant allowed.

Solicitors: *David Marshall; M. N. Samy.*

TAN KAH ENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ambrose J.) September 16, 1965]

[Singapore — Criminal Appeal from Magistrate's Court No. 249 of 1964]

Criminal Procedure — Sentence — Fine — Imposition of.

Criminal Procedure — First offender under 21 — Imprisonment — Conditional discharge.

Gaming — Assisting in carrying on a public lottery — First Offender — Gravity of offence.

The appellant a seamstress aged 17, was convicted of assisting in carrying on a public lottery contrary to section 4(1)(c) of the Common Gaming Houses Ordinance, 1961, and sentenced to a fine of $3,000 or, in default, 6 months' imprisonment. She appealed against sentence. At the time the appeal was heard she was a maidservant earning $50 per month.

Held: the fine of $3,000 was manifestly excessive; a fine should always be related to the means of the offender; the imposition of a fine beyond the appellant's means or 6 months' imprisonment in default of payment was tantamount to sentencing the appellant to 6 months' imprisonment without the option of a fine.

Per curiam: It is desirable that as far as possible a first offender under the age of 21 years should be kept out of prison, unless the offence is so serious that a sentence of imprisonment has to be imposed. Assisting in carrying on a public lottery is not so serious an offence. Before imposing imprisonment on an offender under 21, the court must be of the opinion that no other method of dealing with the offender is appropriate.

MAGISTRATE'S CRIMINAL APPEAL.

A. J. Braga for the appellant.

Dalip Singh (Deputy Public Prosecutor) for the respondent.

Ambrose J.: In this case the appellant was convicted of assisting in carrying on a public lottery, an offence against section 4(1)(c) of the Common Gaming Houses Ordinance, 1961, and sentenced to a fine of $3,000 or, in default, 6 months' imprisonment. The appellant abandoned her appeal against conviction and proceeded with her appeal against sentence.

The appellant was a seamstress when she was convicted, and a maidservant earning $50 per month when her appeal was heard. The fine of $3,000 seemed to me to be manifestly excessive. It appeared to have been imposed with a view to punishing the promoters of the public lottery in question. A fine should always be related to the means of the offender. The imposition of a fine beyond the appellant's means or six months' imprisonment in default of payment was tantamount to sentencing the appellant to six months' imprisonment without the option of a fine. The point to be considered was whether upon the facts of the present case such a sentence was appropriate. The appellant was a first offender and seventeen years old at the time of her conviction. It is desirable that, as far as possible, a first offender under the age of twenty-one years should be kept out of prison, unless the offence is so serious that a sentence of imprisonment has to be imposed. I did not think that assisting in carrying on a public lottery is so serious an offence. Before imposing imprisonment on an offender under twenty-one, the court must be of the opinion that no other method of dealing with the offender is appropriate. I was of the opinion that it would be more beneficial to the appellant and to the community at large to discharge her subject to the condition that she commits no offence during a period of twelve months. It seemed to me that a discharge subject to such a condition would deter the appellant from committing a similar offence for twelve months more effectively than a fine within her means, because in

the event of her committing another offence during the twelve months she could be punished for that offence as well as for the original offence. Furthermore it seemed to me that by resisting the temptation to repeat the offence for a period of twelve months she would increase the chances of her resisting the temptation thereafter. It was for the above reasons that I set aside the sentence and discharged the appellant subject to the condition that she commits no offence during a period of twelve months.

Sentence set aside.
Appellant discharged conditionally.

MUTHUSAMY v. SUBRAMANIAM

[O.C.J. (Winslow J.) September 30, 1965]
[Singapore — Suit No. 419 of 1952]

Contract — Requirement of being in writing — Contract in Tamil language — Variation of contract — Whether documents fulfil requirement — Breach — Damages.

Power of attorney — Attorney acting on revoked power.

The plaintiff entered into an agreement in the Tamil language with the defendant on October 10, 1949 whereby he sold the business of a mess at 40A Market Street, of which he was chief tenant, to the defendant, for the sum of $2,000 reserving an option to re-purchase it from the defendant on payment to him of $2,000 by December 31, 1951 after giving him two weeks notice of intention to exercise the option to re-purchase. The plaintiff also empowered the defendant by a power of attorney to deal with subtenants and to transfer the tenancy to his name or that of any other person.

Subsequently on September 25, 1950, the plaintiff entered into a further agreement with the defendant whereby the original agreement was varied by providing that if the plaintiff failed to pay $2,000 on December 31, 1951, he would pay this sum on demand with interest at 9%. The defendant on May 11, 1951, transferred the tenancy of the premises to his own name, despite the fact that the power of attorney had been revoked.

Held: (1) the documents in this case fulfilled the requirement that they should be in writing notwithstanding that they were written in the Tamil language and there had been a valid variation of the contract;

(2) the defendant was in breach of contract in transferring the tenancy of the premises to his own name and subsequently surrendering it to the landlord and was therefore liable in damages to the plaintiff.

Cases referred to:—

(1) *Morris v. Baron* [1918] A.C. 1.

(2) *Frith* v. *Frith* [1906] A.C. 254.

CIVIL SUIT.

N. A. Christopher for the plaintiff.

M. Loganathan for the defendant.

Winslow J.: On 10th October, 1949 the plaintiff, who was the proprietor of the business of a mess at No. 40A Market Street, Singapore, of which he was the chief tenant, sold the said business to the defendant for the sum of $2,000 reserving an option to re-purchase it from the defendant on payment to him of $2,000 by 31st December, 1951 after giving him two weeks' notice of intention to exercise the option to re-purchase. On the same day he also executed a power of attorney in the defendant's favour, empowering the latter to deal effectively with his sub-tenants, and also empowering the defendant to have the tenancy of No. 40A Market Street, Singapore transferred into the name of the defendant or of any other person. Having executed these instruments he left for India but subsequently returned in May, 1950.

On 25th September, 1950 he entered into a further arrangement with the defendant whereby the original agreement (hereinafter referred to as "the agreement") for the sale of his business was varied by providing, in effect, that if he failed to pay $2,000 on 31st December, 1951 he would pay this sum on demand with interest at nine per cent per annum from 1st January, 1952, and it appears to have been clearly understood between the parties that the principal and interest would be paid either in Singapore in Malayan currency or in India in Indian currency. This is evidenced by two documents (Exhibits P1 and P2, which will hereinafter be referred to as "the documents") signed on that date by the plaintiff and the defendant respectively.

It was contended by Mr. Christopher, counsel for the plaintiff, that this variation altered the terms of the agreement in such a way as to effect a re-transfer of the said business to the plaintiff on 1st January, 1952 on the understanding that he would, from that date, be responsible for the payment of any balance of principal remaining unpaid together with the aforesaid interest.

Counsel for the defendant, Mr. Loganathan, however, contended that little reliance should be placed on these documents and that the court should be slow to act on them on the ground that the defendant was not particularly literate in the Tamil language in which these documents were written, and secondly, on the ground that, as the documents were written in the Tamil language, they did not fulfil the requirement that they should have been in writing in the English language. I was given no authority for this somewhat novel proposition.

After considering all the evidence I have come to the conclusion that the contents of these documents were read out and explained to both parties by Veerappan s/o Adaikappan (P.W.2) who himself transcribed these documents on the instructions of both the plaintiff and the defendant and who was a witness to their execution.

There is no reason why I should reject these documents on the ground that the defendant